IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 219 OF 2005

Vijay Govind Mhatre & anr. ... Appellants.
Versus.
Ramchandra Dhanaji Mhatre. ... Respondent.

Shri D.S.Sawant for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 28th April, 2005.

P.C.:

1. Head Shri Sawant appearing for the Appellants. The Appellants are original Defendants Nos.2 and 3. Decree for declaration of ownership and mandatory injunction directing removal of cattle shed erected by the Appellants has been passed by the trial Court and confirmed by the Appellate Court.

2. Shri Sawant appearing for the Appellants has placed reliance on the agreement executed between the parties on 10th February 1982. He submitted that the agreement prima-facie shows that the Appellants' predecessor i.e. the original Defendant No.1 was placed in possession of the suit property. He submitted that the findings of fact recorded by both the Courts below are perverse and the same are contrary to the recitals in the agreement.

3. The Courts below have considered the evidence on record. After considering the oral evidence on record,

the Courts have disbelieved the case made out by the Appellants as regards delivery of possession on the basis of the agreement. The counterclaim made by the Appellants for specific performance of the agreement dated 10th February 1982 has been dismissed. Obviously there is no error in the dismissal of the counterclaim as the same was made after long lapse of time.

4. The trial Court has passed decree declaring the Respondent as the owner of the suit property and mandatory injunction has been granted directing removal of cattle shed constructed by the Appellants. In view of the concurrent findings of fact recorded by the Courts below, no substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.